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FM AMEMBASSY SAN JOSE  
TO RUEHC/SECSTATE WASHDC PRIORITY 9317  
INFO RUEHZA/WHA CENTRAL AMERICAN COLLECTIVE PRIORITY  
RUEHDG/AMEMBASSY SANTO DOMINGO PRIORITY 1575  
RHEHNSC/NSC WASHDC PRIORITY

UNCLAS SAN JOSE 000005

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DEPT FOR WHA, WHA/CEN, WHA/EPSC AND EEB; PASS TO  
USTR:AMALITO, DOLIVER

E.O. 12958: N/A  
TAGS: [CS](#) [ETRD](#) [PGOV](#) [PINR](#) [PREL](#) [SENV](#)  
SUBJECT: ANOTHER CAFTA REFERENDUM GAMBIT

REF: A. A) 2007 SAN JOSE 2070 AND PREVIOUS

[1](#)B. B) SAN JOSE-WHA/CEN EMAIL OF 12/31/07

[1](#)1. (SBU) SUMMARY: The Supreme Election Tribunal (TSE) accepted a petition to collect signatures for another CAFTA-related referendum, this one to ratify the UPOV (Union for the Protection of New Varieties of Plants) Convention and to approve related legislation. The Convention and legislation must be approved as part of the GOCR,s overall CAFTA implementation package. GOCR officials criticized the move as a politically-motivated delaying tactic, and reiterated the GOCR,s commitment to complete the full slate of implementing legislation by the March 1 EIF deadline. The three environmental NGOs which filed the petition plan to collect the required 133,545 signatures as quickly as possible, but their efforts may be moot. The TSE also announced that the next referendum cannot be convoked before July 7, 2008, which should give the GOCR more than enough time to complete the implementing legislation before then. Broader anti-CAFTA groups see the UPOV referendum as one more way to kill CAFTA, and the opposition PAC party may use the TSE ruling to justify further delaying tactics. With

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sufficient discipline and focus in the legislature, the UPOV maneuver should not be more than a distraction for the GOCR. However, even without a new referendum, the legislature returns to work today facing considerable challenges to completing its CAFTA-related work on time. END SUMMARY.

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ANOTHER YEAR, ANOTHER REFERENDUM?  
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[1](#)2. (U) On December 28, the TSE announced that it had accepted a petition filed by three local environmental NGOs to collect signatures for another CAFTA referendum, this one to ratify the UPOV (Union for the Protection of New Varieties of Plants) Convention and to approve related implementing legislation. (The TSE actually ruled on December 21, but the story did not surface for one week.) The UPOV Convention and related legislation must be approved as part of the GOCR,s overall CAFTA implementation package.

[1](#)3. (U) The few GOCR officials available for comment during the year-end holidays were critical. Legislature President Francisco Pacheco told the media that the move was clearly a "delaying tactic designed to derail" CAFTA implementation, and a "discredit" to the October 7 overall CAFTA referendum. Vacationing in Guanacaste, Minister of the Presidency Rodrigo Arias told reporters the move was an "abuse" of the electoral

system, adding that the UPOV issue was too technical to be dealt with in a referendum.

¶4. (U) Both Pacheco and Arias reiterated the GOCR,s commitment to complete the full slate of implementing legislation, including the two UPOV-related items, by the March 1 EIF deadline and certainly before sufficient signatures are collected to launch a referendum. Arias expressed hope that the GOCR would complete the legislation "in January or the first two weeks of February," a slip from the GOCR,s previous (and publicly-stated) internal deadline of 15 January.

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NGOs ANXIOUS TO GET GOING . . .

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¶5. (U) The NGOs which filed the referendum petition in November, led by the Costa Rican Federation for Environmental Conservation (FECON in Spanish), welcomed the TSE ruling. The text was posted on their websites and blogs long before the TSE released it officially. The NGOs have vowed to collect the required signatures as rapidly as possible. The Referendum Law allows up to nine months to do so, and at least 5 percent of the national voter registry, or 133,545, must be collected and validated before a referendum could be held. (Referenda may be held by collection of signatures, by legislative action, or by a combination of executive and legislative action. The latter mechanism was used to convoke the October 2007 CAFTA plebiscite.)

¶6. (U) The NGO leaders (including Fabian Pacheco, son of the former president) hope to mobilize the grassroots "patriotic committees" which were active in the campaign to say "no" to CAFTA in October. All three NGOs oppose UPOV on substantive grounds, largely out of concern that ratifying and implementing that Convention would "flood" Costa Rica with genetically-modified agricultural materials.

¶7. (SBU) However, the broader anti-CAFTA groups (based on their web postings) see the UPOV referendum as one more way to kill CAFTA. Signaling a possible opposition tactic in the legislature, PAC deputy faction head Madrigal has already publicly praised the TSE decision as another indication of the "deepening of democracy" in Costa Rica. The PAC website, meanwhile, has regularly warned of the (genetic engineering and other) "danger" that might flow from hasty ratification of UPOV. The PAC-led opposition therefore may try to block action on the two UPOV-related items, using the call for a new referendum as further justification to criticize the Arias administration and a &legitimate8 way to delay implementation further.

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. . . BUT IMPACT ON IMPLEMENTATION MAY BE LIGHT

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¶8. (U) The UPOV referendum maneuver may not have the impact sought by the petitioners (or the anti-CAFTA forces). TSE President Luis Antonio Sobrado and Magistrate Max Esquivel have been quick to stress that the collection of signatures for a referendum does not impede the regular legislative process; both may proceed in parallel. (According to the Referendum Law, the legislative process can only be stopped when the TSE actually convokes a referendum on the legislation in question; the TSE reiterated this in its December 21 decision.)

¶9. (SBU) Going further, Sobrado emphasized that the UPOV referendum could not be convoked before July 7, 2008 or take place before October 7, 2008, i.e., one year from the dates the CAFTA referendum was convoked and held. (In other words, the TSE is interpreting the Referendum Law, which says only that one referendum can be held each year, to mean there must be one year between referenda.) Under this reasoning, no matter how quickly the signatures were collected, the UPOV referendum could not be convoked before July, which would allow the GOCR ample time to complete all the implementing agenda, even if an EIF extension were requested, before any new referendum becomes relevant.

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COMMENT: CHALLENGES ENOUGH EVEN WITHOUT UPOV

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¶10. (SBU) We view another CAFTA-related referendum in Costa Rica in 2008 as unlikely, but not totally impossible. With sufficient discipline and focus in the legislature -- the same ingredients that have been needed since the beginning of the CAFTA debate -- the GOCR should be able to withstand the combination of probable PAC opposition and likely NGO pressure to hold back the UPOV legislation for approval by referendum. This latest development should light a fire under the Asamblea, which ended 2007 sick and tired of dealing with CAFTA. For that matter, the Costa Rican public also ended the year under the assumption that their role in ratifying/approving CAFTA had been completed. It may be difficult, therefore, for the opposition to drag CAFTA out for nine more months, but this doesn't rule out their trying. And, although we believe the NGOs pressed for the new referendum out of genuine (if misplaced) concerns about UPOV, we can easily foresee domestic and international anti-globalists and anti-free traders jumping on this bandwagon to further their broader agenda.

¶11. (SBU) The legislature returns to work today facing challenges enough, even without the UPOV referendum maneuver. Eight items of implementing legislation are pending plenario action (a drop of one from our previous tally, Ref A), a 9th is in committee and a 10th has not been introduced. Most/all of these will likely face review by the constitutional court. Among these items are the most politically controversial, including UPOV, IPR, and telecom and insurance sector reform. PLN faction chief Mayi Antillon and the legislature leadership has called for a return to the grueling 6 to 7 days a week, three session per day pre-recess schedule, but the Asamblea may be reluctant to resume that pace quickly (if at all). We will have a better sense of the GOCR,s and G38,s thinking for the new year once the major players have reported back to work. Minister Arias,s comments while on vacation suggest that political and procedural realities may be slowing the GOCR,s ambitious legislative timetable.

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